

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

Jun 11, 2020

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BRANDON DAILY,

Petitioner,

v.

STATE OF WASHINGTON and  
JEFFREY UTTECHT,

Respondents.

No. 2:20-cv-00173-SMJ

**ORDER SUMMARILY  
DISMISSING HABEAS CORPUS  
PETITION**

Petitioner Brandon Daily, a prisoner at the Coyote Ridge Corrections Center, brings this *pro se* Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus By a Person in State Custody, ECF No. 1. The \$5.00 filing fee has been paid. Having reviewed the petition and the record in this matter, the Court is fully informed and dismisses the petition because of several deficiencies briefly summarized below.

**EXHAUSTION REQUIREMENT**

Petitioner challenges an unspecified guilty plea in Grant County, Washington. Petitioner does not identify his conviction or his sentence and he indicates that he has not appealed his conviction. ECF No. 1 at 1. He invites the Court to “see case file” but provides no case file. *Id.*

1 Before a federal court may grant habeas corpus relief to a state prisoner, the  
2 prisoner must exhaust the state court remedies available to him. 28 U.S.C.  
3 § 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that  
4 a prisoner give the state courts an opportunity to act on his or her claims before he  
5 or she presents those claims to a federal court. *O’Sullivan v. Boerckel*, 526 U.S. 838  
6 (1999). A petitioner has not exhausted a claim for relief so long as he or she has a  
7 right under state law to raise the claim by an available procedure. *See id.*; 28 U.S.C.  
8 § 2254(c).

9 To meet the exhaustion requirement, the petitioner must have “fairly  
10 present[ed] his claim in each appropriate state court (including a state supreme court  
11 with powers of discretionary review), thereby alerting that court to the federal  
12 nature of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513  
13 U.S. 364, 365–66 (1995). A petitioner fairly presents a claim to a state court by  
14 describing the factual or legal bases for that claim and by alerting the state court “to  
15 the fact that the . . . [petitioner is] asserting claims under the United States  
16 Constitution.” *Duncan*, 513 U.S. at 365–66; *see also Tamalini v. Stewart*, 249  
17 F.3d 895, 898 (9th Cir. 2001). Mere similarity between a claim raised in a state  
18 court and a claim in a federal habeas corpus petition is insufficient. *Duncan*, 513  
19 U.S. at 365–66.

20 Furthermore, to fairly present a claim, the petitioner “must give the state

1 courts one full opportunity to resolve any constitutional issues by invoking one  
2 complete round of the State's established appellate review process.”  
3 *O'Sullivan*, 526 U.S. at 845. Once a federal claim has been fairly presented to the  
4 state courts, the exhaustion requirement is satisfied. *See Picard v. Connor*, 404  
5 U.S. 270, 275 (1971). It appears from the face of the petition and the attached  
6 documents that Petitioner has not exhausted his state court remedies as to each of  
7 his grounds for relief. *See* ECF No. 1. Indeed, Petitioner affirmatively represents  
8 that he did not exhaust his state court remedies by appealing his conviction. *Id.* at 2.

### 9 **GROUND FOR FEDERAL HABEAS CORPUS RELIEF**

10 Throughout the grounds for relief set out in his petition, Petitioner argues that  
11 the State of Washington has no jurisdiction to decide federal constitutional matters.  
12 *Id.* at 5–13, 17–19. It has long been settled that state courts are competent to decide  
13 questions arising under the U.S. Constitution. *See Baker v. Grice*, 169 U.S. 284,  
14 291 (1898) (“It is the duty of the state court, as much as it is that of the federal  
15 courts, when the question of the validity of a state statute is necessarily involved, as  
16 being in alleged violation of any provision of the federal constitution, to decide that  
17 question, and to hold the law void if it violate that instrument.”); *see also Worldwide*  
18 *Church of God v. McNair*, 805 F.2d 888, 891 (9th Cir. 1986) (holding that state  
19 courts are as competent as federal courts to decide federal constitutional matters).  
20 Petitioner's arguments to the contrary are meritless.

1           Petitioner also asserts that the Washington State Constitution contradicts the  
2 U.S. Constitution regarding the Fifth Amendment right to “presentment or  
3 indictment of a Grand Jury.” *Id.* at 17. He claims “no bill of indictment” was brought  
4 against him, rendering his arrest, conviction, and imprisonment illegal. *Id.*  
5 Petitioner seems to argue that because the state courts have defied “federally  
6 established procedures and processes for the adjudication of crimes,” only “a court  
7 of federal jurisdiction” has jurisdiction over his claims. *Id.*

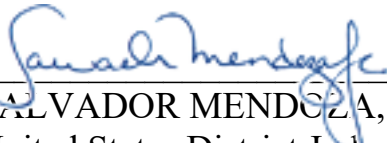
8           As the U.S. Supreme Court stated long ago, “Prosecution by information  
9 instead of by indictment is provided for by the laws of Washington. This is not a  
10 violation of the Federal Constitution.” *See Gaines v. Washington*, 277 U.S. 81, 86  
11 (1928). There is no federal constitutional violation when a prosecuting attorney’s  
12 criminal information is substituted for the grand jury’s indictment. *See Hurtado v.*  
13 *California*, 110 U.S. 516 (1884) (rejecting the claim that an indictment is essential  
14 to due process of law and that a state violates the Fourteenth Amendment by  
15 prosecuting a defendant with a criminal information). Petitioner’s assertions to the  
16 contrary are legally frivolous.

17           Because it plainly appears from the petition and accompanying documents  
18 that Petitioner is not entitled to relief in this Court, **IT IS HEREBY ORDERED**  
19 that the petition, ECF No. 1, is **DISMISSED** pursuant to Rule 4 of the Rules  
20 Governing Section 2254 Cases in the United States District Courts. All pending

1 motions are **DENIED AS MOOT**.

2 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order,  
3 enter judgment, provide copies to Petitioner, and close the file. The Court certifies  
4 that, pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be  
5 taken in good faith and there is no basis upon which to issue a certificate of  
6 appealability. *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of  
7 appealability is therefore **DENIED**.

8 **DATED** this 11<sup>th</sup> day of June 2020.

9   
10 SALVADOR MENDOZA, JR.  
United States District Judge